

HISTORICAL AND REVISION NOTES
PUB. L. 103-272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
20136	45:431(j).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §202(j); added June 22, 1988, Pub. L. 100-342, §9, 102 Stat. 628.

The words “Within 90 days after June 22, 1988” are omitted as expired.

PUB. L. 103-429

This amends 49:20136(2) to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 875).

AMENDMENTS

1994—Par. (2). Pub. L. 103-429 substituted “section” for “subsection”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

§ 20137. Event recorders

(a) DEFINITION.—In this section, “event recorder” means a device that—

(1) records train speed, hot box detection, throttle position, brake application, brake operations, and any other function the Secretary of Transportation considers necessary to record to assist in monitoring the safety of train operation, such as time and signal indication; and

(2) is designed to resist tampering.

(b) REGULATIONS AND ORDERS.—Not later than December 22, 1989, the Secretary shall prescribe regulations and issue orders that may be necessary to enhance safety by requiring that a train be equipped with an event recorder not later than one year after the regulations are prescribed and the orders are issued. However, if the Secretary finds it is impracticable to equip trains within that one-year period, the Secretary may extend the period to a date that is not later than 18 months after the regulations are prescribed and the orders are issued.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 875.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
20137	45:431(m).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §202(m); added June 22, 1988, Pub. L. 100-342, §10, 102 Stat. 629.

In subsection (b), the words “Not later than December 22, 1989” are substituted for “within 18 months after June 22, 1988” for clarity. The words “may extend the period to a date that is not later than 18 months after the regulations are prescribed and the orders are issued” are substituted for “may extend the deadline for compliance with such requirement, but in no event shall such deadline be extended past 18 months after such rules, regulations, orders, and standards are issued” to eliminate unnecessary words.

§ 20138. Tampering with safety and operational monitoring devices

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue or-

ders to prohibit the willful tampering with, or disabling of, any specified railroad safety or operational monitoring device.

(b) PENALTIES.—(1) A railroad carrier operating a train on which a safety or operational monitoring device is tampered with or disabled in violation of a regulation prescribed or order issued under subsection (a) of this section is liable to the United States Government for a civil penalty under section 21301 of this title.

(2) An individual tampering with or disabling a safety or operational monitoring device in violation of a regulation prescribed or order issued under subsection (a) of this section, or knowingly operating or allowing to be operated a train on which such a device has been tampered with or disabled, is liable for penalties established by the Secretary. The penalties may include—

(A) a civil penalty under section 21301 of this title;

(B) suspension from work; and

(C) suspension or loss of a license or certification issued under section 20135 of this title.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 876.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
20138	45:431(o).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §202(o); added June 22, 1988, Pub. L. 100-342, §21, 102 Stat. 638; Sept. 3, 1992, Pub. L. 102-365, §2(3), 106 Stat. 972.

In subsection (a), the words “within 90 days after June 22, 1988” are omitted as expired.

In subsection (b), the words “by another person” are omitted as surplus.

§ 20139. Maintenance-of-way operations on railroad bridges

Not later than June 22, 1989, the Secretary of Transportation shall prescribe regulations and issue orders for the safety of maintenance-of-way employees on railroad bridges. The Secretary at least shall provide in those regulations standards for bridge safety equipment, including nets, walkways, handrails, and safety lines, and requirements for the use of vessels when work is performed on bridges located over bodies of water.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 876.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
20139	45:431(n).	Oct. 16, 1970, Pub. L. 91-458, 84 Stat. 971, §202(n); added June 22, 1988, Pub. L. 100-342, §19(a), 102 Stat. 637; Sept. 3, 1992, Pub. L. 102-365, §2(2), 106 Stat. 972.

The words “Not later than June 22, 1989” are substituted for “within one year after June 22, 1988” for clarity.

§ 20140. Alcohol and controlled substances testing

(a) DEFINITION.—In this section, “controlled substance” means any substance under section

102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Transportation.

(b) GENERAL.—(1) In the interest of safety, the Secretary of Transportation shall prescribe regulations and issue orders, not later than October 28, 1992, related to alcohol and controlled substances use in railroad operations. The regulations shall establish a program requiring—

(A) a railroad carrier to conduct preemployment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of a controlled substance in violation of law or a United States Government regulation, and to conduct reasonable suspicion, random, and post-accident testing of such employees for the use of alcohol in violation of law or a United States Government regulation; the regulations shall permit such railroad carriers to conduct preemployment testing of such employees for the use of alcohol; and

(B) when the Secretary considers it appropriate, disqualification for an established period of time or dismissal of any employee found—

(i) to have used or been impaired by alcohol when on duty; or

(ii) to have used a controlled substance, whether or not on duty, except as allowed for medical purposes by law or a regulation or order under this chapter.

(2) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations and issue orders requiring railroad carriers to conduct periodic recurring testing of railroad employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(c) TESTING AND LABORATORY REQUIREMENTS.—In carrying out this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested; and

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of cer-

tification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that a laboratory involved in controlled substances testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that all tests indicating the use of alcohol or a controlled substance in violation of law or a Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual's confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (other than information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(d) REHABILITATION.—The Secretary of Transportation shall prescribe regulations or issue orders establishing requirements for rehabilitation programs that at least provide for the identification and opportunity for treatment of railroad employees responsible for safety-sensitive functions (as decided by the Secretary) in need of assistance in resolving problems with the use of alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which employees shall be required to participate in a program. Each railroad carrier is encouraged to make such a program available to all of its employees in addition to employees responsible for safety-sensitive functions. This subsection does not prevent a railroad carrier from establishing a program under this subsection in cooperation with another railroad carrier.

(e) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS AND REGULATIONS.—In carrying out this section, the Secretary of Transportation—

(1) shall establish only requirements that are consistent with international obligations of the United States; and

(2) shall consider applicable laws and regulations of foreign countries.

(f) OTHER REGULATIONS ALLOWED.—This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed or order issued before October 28, 1991, governing the use of alcohol or a controlled substance in railroad operations.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 876; Pub. L. 104–59, title III, §342(b), Nov. 28, 1995, 109 Stat. 609.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
20140(a)	45:431(r)(5).	Oct. 16, 1970, Pub. L. 91–458, 84 Stat. 971, §202(r); added Oct. 28, 1991, Pub. L. 102–143, §4, 105 Stat. 957.
20140(b)	45:431(r)(1) (1st–3d sentences).	
20140(c)	45:431(r)(2).	
20140(d)	45:431(r)(3).	
20140(e)	45:431(r)(4).	
20140(f)	45:431(r)(1) (last sentence).	

In subsection (b)(1), before clause (A), the words “controlled substances” are substituted for “drug” for consistency in this section. In clauses (B) and (C), the word “found” is substituted for “determined” for consistency in the revised title.

In subsection (c)(3), the words “of any employee” are omitted as surplus.

In subsection (c)(4), the words “by any employee” are omitted as surplus.

In subsection (c)(5), the word “tested” is substituted for “assayed” for consistency. The words “2d confirmation test” are substituted for “independent test” for clarity and consistency.

AMENDMENTS

1995—Subsec. (b)(1)(A). Pub. L. 104–59 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “a railroad carrier to conduct pre-employment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a United States Government regulation; and”.

ALCOHOL AND CONTROLLED SUBSTANCE TESTING OF MECHANICAL EMPLOYEES

Pub. L. 115–271, title VIII, §8102, Oct. 24, 2018, 132 Stat. 4104, provided that:

“(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act [Oct. 24, 2018], the Secretary of Transportation shall publish a rule in the Federal Register revising the regulations promulgated under section 20140 of title 49, United States Code, to cover all employees of railroad carriers who perform mechanical activities.

“(b) DEFINITION OF MECHANICAL ACTIVITIES.—For the purposes of the rule under subsection (a), the Secretary shall define the term ‘mechanical activities’ by regulation.”

ALCOHOL AND CONTROLLED SUBSTANCE TESTING FOR MAINTENANCE-OF-WAY EMPLOYEES

Pub. L. 110–432, div. A, title IV, §412, Oct. 16, 2008, 122 Stat. 4889, as amended by Pub. L. 114–94, div. A, title XI, §11316(j)(6), Dec. 4, 2015, 129 Stat. 1678, provided that: “Not later than 2 years following the date of enactment of this Act [Oct. 16, 2008], the Secretary shall complete a rulemaking proceeding to revise the regulations prescribed under section 20140 of title 49, United

States Code, to cover all employees of railroad carriers and contractors or subcontractors to railroad carriers who perform maintenance-of-way activities.”

[For definition of “railroad carrier”, as used in section 412 of Pub. L. 110–432, set out above, see section 2(a) of Pub. L. 110–432, set out as a note under section 20102 of this title.]

§ 20141. Power brake safety

(a) REVIEW AND REVISION OF EXISTING REGULATIONS.—The Secretary of Transportation shall review existing regulations on railroad power brakes and, not later than December 31, 1993, revise the regulations based on safety information presented during the review. Where applicable, the Secretary shall prescribe regulations that establish standards on dynamic braking equipment.

(b) 2-WAY END-OF-TRAIN DEVICES.—(1) The Secretary shall require 2-way end-of-train devices (or devices able to perform the same function) on road trains, except locals, road switchers, or work trains, to enable the initiation of emergency braking from the rear of a train. The Secretary shall prescribe regulations as soon as possible, but not later than December 31, 1993, requiring the 2-way end-of-train devices. The regulations at least shall—

(A) establish standards for the devices based on performance;

(B) prohibit a railroad carrier, on or after the date that is one year after the regulations are prescribed, from acquiring any end-of-train device for use on trains that is not a 2-way device meeting the standards established under clause (A) of this paragraph;

(C) require that the trains be equipped with 2-way end-of-train devices meeting those standards not later than 4 years after the regulations are prescribed; and

(D) provide that any 2-way end-of-train device acquired for use on trains before the regulations are prescribed shall be deemed to meet the standards.

(2) The Secretary may consider petitions to amend the regulations prescribed under paragraph (1) of this subsection to allow the use of alternative technologies that meet the same basic performance requirements established by the regulations.

(3) In developing the regulations required by paragraph (1) of this subsection, the Secretary shall consider information presented under subsection (a) of this section.

(c) EXCLUSIONS.—The Secretary may exclude from regulations prescribed under subsections (a) and (b) of this section any category of trains or rail operations if the Secretary decides that the exclusion is in the public interest and is consistent with railroad safety. The Secretary shall make public the reasons for the exclusion. The Secretary at least shall exclude from the regulations prescribed under subsection (b)—

(1) trains that have manned cabooses;

(2) passenger trains with emergency brakes;

(3) trains that operate only on track that is not part of the general railroad system;

(4) trains that do not exceed 30 miles an hour and do not operate on heavy grades, except for any categories of trains specifically designated by the Secretary; and